

PTO/SB/21 (09-04)

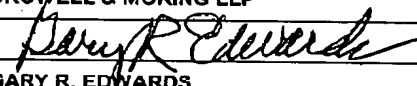
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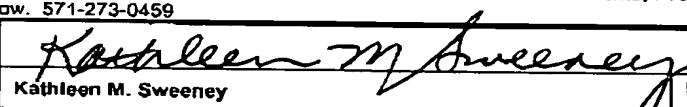
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<b>TRANSMITTAL FORM</b>  <small>(to be used for all correspondence after initial filing)</small>	Application Number	10/551,443
	Filing Date	September 29, 2005
	First Named Inventor	Heinrich Eberl
	Art Unit	
	Examiner Name	
Total Number of Pages in This Submission		8
Attorney Docket Number		101795.56306US

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Documents <input type="checkbox"/> Response to Missing Parts/Incomplete Application  <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Request for Reconsideration and Third Renewed Petition under 37 C.F.R. §1.137(b) (5 pages) <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	CROWELL & MORING LLP		
Signature			
Printed Name	GARY R. EDWARDS		
Date	August 8, 2007	Reg. No.	31,824

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Typed or printed name	Kathleen M. Sweeney	Date	August 8, 2007

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8 AUG 2007

Legal Staff  
International Division

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No.	: 10/551,443	Confirmation No.	: 2972
First Named Inventor	: Heinrich Eberl		
Filed	: September 29, 2005	<b>RECEIVED</b>	
TC/A.U.	:		
Examiner	:	8 AUG 2007	
Docket No.	: 101795.56306US		
Customer No.	: 23911	Legal Staff	
		International Division	
Title	: Device and Method for Determining the Orientation of an Eye		

**REQUEST FOR RECONSIDERATION AND THIRD RENEWED  
PETITION UNDER 37 C.F.R. §1.137(b)**

**Mail Stop PCT**  
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Office of PCT Legal Administration  
P.O. Box 1450  
Alexandria, VA 22313-1450

**August 8, 2007**

Sir:

This Request for Reconsideration and Third Renewed Petition under 37 C.F. R. §1.137(b) is submitted in response to the Decision dated June 8, 2007 by the Office of Patent Cooperation Treaty, Legal Administration, dismissing the previous Request for Reconsideration filed January 29, 2007. As indicated in the Decision, no additional fee is due in connection with this Request for Reconsideration.

All of the observations, facts, and arguments set forth in the January 29, 2007 and August 8, 2006 petitions, and the Declarations attached thereto, are hereby incorporated in this document by reference.

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It has been recognized that the standard for establishing that an abandonment was "unintentional" is "much less strict" than that applied in the case of claimed unavailability. In Re Brian, 2 USPQ 2<sup>nd</sup> 1215, 1218 (Dep. Ass't Comm'r 1986). It is of course also well established that the "unintentional" standard excludes deliberate decisions not to prosecute an application. (See Chisum on Patents §11.03[2][b][vi].) The question of the Applicant's intent in this regard is clearly a matter of fact, which is ascertainable only from the Applicant's own declarations, and from the inferences which can be drawn from the facts and circumstances surrounding the failure to timely prosecute an application. The issue presented by this petition is whether, on the one hand, the facts and circumstances surrounding the Applicants' failure to timely file this application in the United States negate Mr. Dickerson's sworn statement i) that it was never his intention to abandon this application, ii) that he always intended to prosecute it here, and iii) that the entire delay in filing, through the date of his first petition, was unintentional; or rather, on the other hand, whether the facts presented by way of argument in the respective petitions, and in the Declaration attached to the January 29, 2007 Request for Reconsideration, support the inference that the delay in filing was "unintentional".

In response to the matters alleged at paragraphs 18 through 44 of the June 29 Dickerson Declaration, the June 8, 2007 Decision attributes Mr. Dickerson's delay from 24 November 2004 to 13 February 2005 to his

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"deliberately choosing other priorities over filing the instant application". With regard to the delay between April 7, 2005 and 29 September 2005, when the first petition was filed, the Decision states that Mr. Dickerson "details items he spent his time on between that time, but again, this appears to be a matter of prioritizing".

In a perfect world, these harsh conclusions might otherwise be justified. However, Applicant respectfully submits that perfection is not the standard that should be applicable in this instance. Once again, it is noteworthy that the issue presented by this petition is not whether the various demands on Mr. Dickerson's time and resources during the period in question effectively prevented him from filing in the United States. Rather, it is whether the totality of the circumstances is sufficient to establish that Mr. Dickerson's failure to file in the United States reflected a deliberate ("intentional" or "conscious") determination on his part not to pursue the application in question by prosecuting it in the United States. Petitioner respectfully submits that the answer to the latter question is negative, and that the record does not establish or support the proposition that there was ever a point in time at which Mr. Dickerson determined not to pursue the prosecution of this application in the United States.

The Decision of June 8, 2007 concludes that Mr. Dickerson "deliberately [chose] other priorities over filing the instant application". Petitioner

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respectfully submits that this is not a fair characterization of the facts set forth in the Dickerson Declaration. Again, it should be noted that this is not a question of an "unavoidable" abandonment, rather it is a question of whether the abandonment was in this case "intentional" or "unintentional". In the real world, not every act of a human being is the result of "intent". Rather, paragraphs 19 through 44 of the Dickerson Declaration set forth a large number of circumstances, including serious illnesses, financial difficulties, family situation, etc., which influenced his life during the relevant period. Thus, while there may indeed have been "priorities" involved, in that it was not "impossible" for Mr. Dickerson to have filed a patent application in the United States within the time provided, it does not follow that such priorities were "chosen" (deliberately or otherwise) by Mr. Dickerson. Rather, they were in fact effectively thrust upon him by such matters as illness, financial difficulties and the like. While circumstances did not make it impossible for him to file in the United States, Petitioner submits that they were sufficient to negate any inference of an intent on his part to abandon the present application in the United States.

Mr. Dickerson has submitted a sworn declaration stating that "at no time has it ever been my intention to abandon this application. In fact, on the contrary, it was and has always been my steadfast determination to prosecute this application in the United States." The latter is of course the ultimate issue presented by this petition. Only Mr. Dickerson himself knows to a certainty

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what his intentions were or were not, and he has submitted a sworn declaration to that effect. He respectfully submits that the circumstances which attended the period in question support his sworn declaration – not that it was impossible for him to have filed, but that he had never intended to abandon the application and in fact at all times strove to do so, based on the knowledge and resources available to him at the time.

If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 101795.56306US).

Respectfully submitted,



Gary R. Edwards

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